

# COMMITTEE ON JUDICIARY

*Representative Eddie Farnsworth, Chairman*  
*Representative Adam Driggs, Vice-Chairman*  
*Katy Proctor, Legislative Research Analyst*



\* Strike-everything Amendment  
[E] Emergency Clause  
[P 108] Proposition 108 Clause  
[P 105] Proposition 105 Clause

Bill	Chapter	Short Title	Page
HB 2016	178	*material witness; release; detention; deposition .....	110
HB 2077	111	writ of restitution; criminal trespass .....	110
HB 2106	183	*ballots; permanent early voting .....	110
HB 2342	248 [E]	unlawful sexual conduct involving prisoners .....	111
HB 2344	124	juvenile graffiti; monetary assessment .....	111
HB 2469	45	concealed weapons; petty offense .....	111
HB 2690	277 [P 105]	clean elections; amendments .....	112
HB 2726	210	*communication service records; unauthorized use .....	113
HB 2750	131	*justices of the peace; jurisdiction .....	113
SB 1020	20	serious offenses; consecutive sentencing .....	113
SB 1039	21	Arizona criminal justice commission; continuation .....	113
SB 1043	24	theft; means of transportation.....	113
SB 1084	47	aggravated assault .....	114
SB 1126	49	appellate proceedings; victim notification; continuation.....	114
SB 1167	192	criminal case information; disclosure.....	114
SB 1222	287	*criminal street gangs; membership; sentencing .....	114
SB 1229	159	aggravated DUI; probation; incarceration.....	115
SB 1265	289	*bailable offenses; illegal immigration.....	115
SB 1286	290	victims' rights omnibus.....	115
SB 1331	163	criminal justice commission; powers; duties .....	116

SB 1333	164	shoplifting; continuing criminal episode.....	117
SB 1430	168	elections; primary date; early voting .....	117
SB 1434	199	juries; commissioner duties; juror selection .....	117
SB 1619	140	prisoners; restitution payments .....	119
SB 1628	176	youthful sex offenders; treatment.....	119

**HB 2016 – Chapter 178 – \*material witness; release; detention; deposition**

Allows the court to order the temporary detention of a person if it appears from an affidavit that the testimony of the person is material in a criminal proceeding related to human smuggling, and it is shown that it may become impracticable to secure the presence of the person by subpoena because of the immigration status of the person.

- Allows the release of a witness to be delayed for a reasonable period of time until the deposition can be taken.
- Limits the amount of time a witness may be detained to 7 days after the entry of the order.
- Specifies that a material witness may be detained by a law enforcement agency or in a secure facility or jail.
- Allows a deposition taken under this section to be used at trial and any pre-trial proceeding, pursuant to Court Rule.

**HB 2077 – Chapter 111 – writ of restitution; criminal trespass**

States that a person who has been served a writ of restitution commits criminal trespass in the 3<sup>rd</sup> degree if the person returns to or remains in the dwelling unit, mobile home space or recreational vehicle space without the permission of the property owner, that the court must provide a notice to the defendant outlining this information and that the person preparing the judgment shall ensure that it does not contain a social security number.

**HB 2106 – Chapter 183 – \*ballots; permanent early voting**

Requires the county recorder to maintain a permanent early voting list and makes changes to statutes governing the Presidential Preference Election and write-in candidates.

***Presidential Preference Election (PPE)***

- Changes the date a nomination paper must be filed for the PPE to at least 50 days before the election.
- Allows an elector to request an early ballot up to 11 days before the PPE.
- Allows early voting for the PPE to begin within the limits outlined in A.R.S. § 16-542.

***Permanent Early Voter List (PEV List)***

- Requires the county recorder to maintain a PEV List and allows any voter to request to be included on the list to receive an early ballot for any election where the county voter registration roll is used to prepare the election register.
- States that in order for a voter to be added to the PEV List, the voter must make a written request to be added. Specifies information that must be included on the application.
- Requires the county recorder to compare the signature on the request with the signature on the voter's registration form.
- Makes an absent uniformed services voter or overseas voter eligible for the PEV List.
- Prohibits a voter from using a mailing address outside of the county for purposes of the early voting list.

- States that at least 120 days before a March or September election, the county recorder must mail an election notice to all eligible voters on the PEV List. Outlines notice requirements.
- Requires the county recorder to mail an early ballot to all eligible voters on the PEV List no later than the first day of early voting.
- Sends ballots to any person on the PEV List automatically until specified situations occur.
- Allows a voter at any time to make a written request to be removed from the PEV List.
- Removes a voter from the PEV List if the voter is moved to the inactive list, but states that a voter's failure to vote an early ballot is not grounds for removing the voter from the PEV List.

#### ***Write-in Candidates***

- Requires write-in candidates to file their nomination papers no later than 5:00 pm on the 76<sup>th</sup> day before the election if the election may be cancelled because the number of persons running for vacancies is less than or equal to the number of vacancies.

#### **HB 2342 – Chapter 248 [E] – unlawful sexual conduct involving prisoners**

Expands the list of persons who are prohibited from engaging in sexual contact with prisoners and decriminalizes the act of a prisoner engaging in sexual contact with a person affiliated with a correctional facility. Prescribes a Class 2 felony for engaging in prostitution with a person under 18 years of age and expands the definition of a *dangerous crime against children* to include luring a minor for sexual exploitation.

- Requires a person convicted of engaging in child prostitution to serve at least 30 days in jail if the person is sentenced to probation.
- Provides an enhanced sentence for specific child prostitution offenses. Requires the sentence for sex trafficking of a minor or child prostitution to be consecutive to any other sentence.
- Modifies the current defense for child prostitution so that it is only applicable to a person who engages in prostitution with a minor who is 15, 16 or 17 years old if the person could not reasonably have known the age of the minor.
- Expands the definition of *prostitution* and adds child prostitution to the definition of a *serious offense* in A.R.S. § 13-604.
- Specifies that if a person has a prior predicate felony, the person must be sentenced to a presumptive of 15 years for luring a minor for sexual exploitation.

#### **HB 2344 – Chapter 124 – juvenile graffiti; monetary assessment**

Requires persons under the age of 18 who commit criminal damage by drawing or inscribing on any public or private building, structure, or surface without the permission of the owner to pay a fine of at least \$300 but not more than \$1,000. Allows the juvenile to perform community restitution credited at the rate of \$10 per hour at the court's discretion, in lieu of paying the fine.

#### **HB 2469 – Chapter 45 – concealed weapons; petty offense**

Reduces the penalty for concealed weapon permit holders who carry a concealed weapon but do not have the permit on their person from a Class 1 misdemeanor to a petty offense.

### **HB 2690 – Chapter 277 [P 105] – clean elections; amendments**

Makes numerous changes to laws regarding campaign finance and the Citizens Clean Election Act. Contains a Proposition 105 clause.

#### ***Campaign Finance Changes for Non-Participating Candidates***

- Raises the amount of money that a non-participating legislative candidate may accept as follows:
  - Individual contributions from \$312 to \$390.
  - Political committee contributions from \$312 to \$390.
  - Total contributions from political committees from \$8,016 to \$12,921.
- Increases the total amount an individual can contribute in a calendar year from \$3,740 to \$5,610.
- Exempts any non-participating candidate who is not running against a participating candidate from specific reporting requirements.
- States that for the purposes of supplemental reports, no detail other than the dollar amount, the candidate and the date is required.

#### ***Funding For Participating Candidates***

- Increases the primary election spending limits by 30 percent for candidates for Governor and 60 percent for candidates for other statewide offices.
- Subtracts 6 percent for a non-participating candidate's fundraising expenses from the amount of matching monies paid during the primary and general periods to a participating candidate. Subtracts the amount of early contributions raised by the participating candidate from matching monies paid during the primary period.
- Deducts expenditures made during the primary by an independent candidate or unopposed non-participating candidate from the total amount of money raised for the purpose of determining matching monies, up to the amount of primary funds received by the participating candidate.
- Requires the SOS to send all qualifying contribution slips (slips) to the county recorder if the result of the first verification is less than 110 percent.
- Strikes the current language that disqualifies a candidate from receiving funds if the result of the first verification is less than 90 percent.
- Prohibits the county recorder from checking slips again during the second verification process if the slip has already been verified during the first verification process.
- States that a participating candidate who fails to qualify for the primary ballot must return all monies in the candidate's campaign account above the amount sufficient to pay unpaid bills for expenditures made before the date that the candidate failed to qualify, return all assets purchased with public funds in that election cycle, including signs and repay any monies paid to a family member.

### ***Citizens Clean Election Commission (CCEC)***

- Prohibits the CCEC from requiring candidates to use a reporting system that is different than the system jointly approved by the CCEC and the SOS.
- Prohibits the CCEC from taking action on an external complaint if it is filed more than 90 days after the post-election report is filed or 90 days after the canvass, whichever is later.
- Requires the CCEC to file a notice of exempt rule-making along with the proposed rule with the SOS for publication in the Arizona Administrative Register.
- Allows the CCEC to adopt rules after considering comments received during the 60-day comment period, and only during an open meeting.
- Requires rules given final approval by the CCEC to be filed with the SOS for publication in the Arizona Administrative Register. Makes all rules adopted by the CCEC only applicable prospectively from the date that the rule was adopted.
- Makes rules adopted to address the actions of a particular candidate or committee effective for the next election cycle, unless a unanimous vote of the CCEC is obtained. If a unanimous vote occurs, the rule is effective immediately.
- Provides that beginning on January 1, 2010, all rules adopted by the CCEC are not effective until January 1 of the following year. Rules adopted by unanimous vote of the CCEC are effective and enforceable immediately.

### **HB 2726 – Chapter 210 – \*communication service records; unauthorized use**

Expands the existing crime of falsely procuring, selling or receiving *telephone records* to include *communication service records* and *public utility records* and prescribes a violation a Class 1 misdemeanor.

### **HB 2750 – Chapter 131 – \*justices of the peace; jurisdiction**

Increases the exclusive civil jurisdiction of justice of the peace (JP) courts from \$5,000 to \$10,000 and further specifies the jurisdiction of JP courts in Maricopa County.

### **SB 1020 – Chapter 20 – serious offenses; consecutive sentencing**

Sentences a person convicted of a felony offense to a consecutive prison term if the offense was committed while the person was under the jurisdiction of the Arizona Department of Corrections.

### **SB 1039 – Chapter 21 – Arizona criminal justice commission; continuation**

Continues the Arizona Criminal Justice Commission until July 1, 2017.

### **SB 1043 – Chapter 24 – theft; means of transportation**

Requires a person reporting a vehicle theft to sign an affidavit provided by law enforcement.

- Provides that the affidavit must be signed in person if an officer comes to take the report or be signed, notarized and mailed within 7 days if the report is not taken in person.
- Removes the stolen vehicle information from the databases of the National Crime Information Center and the Arizona Criminal Justice Information System if the signed affidavit is not received by the appropriate law enforcement agency within 30 days.

**SB 1084 – Chapter 47 – aggravated assault**

Reorganizes A.R.S. § 13-1204 to clarify which offenses constitute aggravated assault.

**SB 1126 – Chapter 49 – appellate proceedings; victim notification; continuation**

Repeals Laws 2005, Chapter 260, Section 15. This repeal will continue the process that allows a victim the right to respond to a request for an extension to file a brief in any appellate proceeding or post-conviction relief proceeding for a capital case.

**SB 1167 – Chapter 192 – criminal case information; disclosure**

Requires the Clerk of the Maricopa County Superior Court to compile and publish electronically all superior court criminal case minute entries from and after December 31, 2007. Requires the clerk of the superior court in all other counties to compile and publish electronically all superior court criminal case minute entries by January 1, 2010. Prescribes requirements for how the information must be accessible.

**SB 1222 – Chapter 287 – criminal street gangs; membership; sentencing**

Creates sentencing enhancements and increased penalties for persons who commit specific offenses to further, promote or assist a criminal street gang, allows the Department of Public Safety (DPS) to enter into contracts for monitoring sex offenders and gang members and appropriates monies to DPS for enforcement purposes.

***Penalties***

- Increases the presumptive term of incarceration for a person convicted of committing a felony with the intent to promote, further or assist criminal conduct by a criminal street gang (gang) by 5 years if the offense is a Class 2 or Class 3 felony.
- Allows the court to increase the sentence up to 5 years for a person convicted of a felony committed in a school safety zone if the person is a gang member.
- Makes threatening or intimidating a Class 6 felony if the person is a gang member.
- Increases the penalty for threatening or intimidating to a Class 3 felony if it is done to either:
  - Promote, further or assist in the interests of a gang, criminal syndicate or racketeering enterprise.
  - Cause, solicit or induce another person to participate in a gang, criminal syndicate or racketeering enterprise.
- Assesses a Class 5 felony for a person to shoplift for the purpose of promoting, furthering or assisting any gang or criminal syndicate.
- Creates the crime of participating in or assisting a gang. Makes participating in a gang a Class 2 felony and assisting a gang a Class 3 felony.
- Allows the use of a common name or identifying sign/symbol to be used to prove the existence of the gang or membership in the gang.
- Increases the penalty for obstructing a criminal investigation and hindering prosecution from a Class 5 felony to a Class 3 felony if the offense is committed with the intent to further, promote or assist a gang.

### ***Monitoring of Gang Members and Registered Sex Offenders***

- Allows DPS to enter into a contract with a *qualified vendor* to provide a data monitoring and alert system for persons who are gang members or registered sex offenders.

### ***Appropriations***

- Appropriates \$2 million from the GF in FY 2008 to DPS as follows:
  - \$1 million to GIITEM to be distributed to county attorneys for vertical prosecutors to prosecute gang-related offenses.
  - \$1 million for crime analysts and related employee expenditures and to GIITEM to upgrade the state gang intelligence database.

### ***Joint Legislative Study Committee***

- Establishes a Joint Legislative Study Committee on Security Threat Groups and Criminal Street Gangs (Committee).
- Outlines the membership and charge of the Committee and permits the members to receive reimbursement for expenses.
- Requires the Committee to report its findings by December 31, 2007, and repeals the Committee from and after September 30, 2008.

### ***Miscellaneous***

- Provides that for purposes of securing bail, proof that a person is a gang member gives rise to the inference that the person poses a substantial danger to the community and no condition of release will assure the safety of the community.

### **SB 1229 – Chapter 159 – aggravated DUI; probation; incarceration**

Excludes time spent while incarcerated or on absconder status for the purposes of determining the 7 year period for an aggravated driving under the influence conviction.

### **SB 1265 – Chapter 289 – bailable offenses; illegal immigration**

Establishes a probable cause standard for determining that a person has entered or remained illegally in the United States for purposes of bail eligibility, requires eligibility for bail to be determined at the time of the person's initial appearance and outlines several factors that the court must consider in making the determination. Requires incarcerating agencies to make citizenship determinations within 24 hours and transmit citizenship information to the court and prosecutor if the person being detained is not a US citizen.

### **SB 1286 – Chapter 290 – victims' rights omnibus**

Makes numerous changes to statutes governing the rights of crime victims.

### ***Payment of Restitution***

- Requires that every month the clerk of the court must notify the prosecutor, sentencing court and any person entitled to restitution if the defendant has defaulted in the payment of restitution or any installment.
- Increases the amount of time the court may extend a person's probation if the person fails to satisfy restitution requirements from 3 years to 5 years for a felony and from 1 year to 2 years for a misdemeanor.



### ***Orders of Protection***

- Requires the custodial agency to make reasonable efforts to contact the victim and other designated persons immediately upon releasing a person who has been arrested for violating an order of protection.

### ***Speedy Trial***

- Requires the prosecutor's office to give notice to a victim in a timely manner of all continuances and to make reasonable efforts to notify a victim of any request for a continuance.
- Requires a motion to continue to be in writing unless the court makes a special finding on the record. Permits the court to grant a continuance only if extraordinary circumstances exist and the delay is indispensable to the interests of justice.
- Stipulates that the restrictions on continuances do not apply to justice of the peace and municipal courts.
- Prescribes that before ruling on a motion for a continuance, the court must consider the victim's views and the victim's right to a speedy trial.
- Requires the court to state on the record the specific reason for the continuance if one is granted.

### ***Transcripts and Police Reports***

- Requires the court to provide to a victim at no charge the minute entry or portion of the record of any proceeding if it is reasonably necessary for pursuing a claimed victim's right.
- Directs law enforcement agencies to redact a victim's contact and identifying information in publicly accessible records. Provides specific exemptions.

### ***Notice of Decisions***

- Beginning on January 1, 2008, requires the court to give notice to a victim of any memorandum decision or opinion by the court concurrently with the decision or opinion being issued to the parties. Applies only if the decision is requested by the victim.

### ***Miscellaneous***

- Authorizes a crime victim advocate to disclose information to professionals and administrative support personnel that the advocate works with to assist the advocate in providing services to the victim, if written or verbal consent is given by the victim.
- Contains a purpose statement and a Legislative intent section.

### **SB 1331 – Chapter 163 – criminal justice commission; powers; duties**

Transfers Criminal Justice Information System responsibilities from the Arizona Criminal Justice Commission (ACJC) to the Department of Public Safety (DPS).

- Requires the ACJC to provide the Governor a biennial criminal justice system review report, instead of an annual report.
- Stipulates that the ACJC must make recommendations to the Legislature and the Governor regarding the allocation of fund monies through the biennial agency budget request.

### **SB 1333 – Chapter 164 – shoplifting; continuing criminal episode**

Redefines a *continuing criminal episode* for purposes of shoplifting and states that a person is presumed to have the intent to commit shoplifting if the person uses an artifice, instrument, container, device or other article to facilitate the act.

- Defines a *continuing criminal episode* as the theft of property that is worth \$1,500 or more, is committed during at least 3 separate incidences within a period of 3 months and is committed with the intent to resell the merchandise.
- Deletes the current Class 4 felony for a person who enters a business with an artifice, instrument, container, device or other article to facilitate shoplifting.

### **SB 1430 – Chapter 168 – elections; primary date; early voting**

Moves the date of the primary election one week earlier, makes changes to nomination paper deadlines and early voting dates for the Presidential Preference Election and requires an early ballot to be mailed within 48 hours if the request for an early ballot is made within 23 days before the Saturday before the election.

### **SB 1434 – Chapter 199 – juries; commissioner duties; juror selection**

Makes numerous changes to statutes governing the formation of juries and grand juries.

#### ***Process of Summoning Jurors***

- Clarifies that the jury commissioner must produce a *master jury list*.
- Requires jurors to be summoned countywide in compliance with the United States and Arizona Constitutions.
- Allows a court to use alternative procedures for summoning jurors.
- Requires alternative procedures to provide for the summoning of jurors from a fair cross section of the community.

#### ***Superior Court Procedures***

- Allows the superior court in a county with multiple court locations to propose alternative procedures designed to minimize the distance prospective jurors must travel and avoid unnecessary travel expenses by dividing the county into jury districts or using a countywide summoning method affording all persons an opportunity to be considered for service at any court location.

#### ***Justice of the Peace Court (JP) and Municipal Court Procedures***

- States that only persons who live within the city/town limits are eligible for juror service in a municipal court.
- Requires a person in Maricopa County to live within the precinct limits to be eligible for jury service in a JP court.
- Deletes the option of summoning jurors for JP court or municipal courts by utilizing a written order from the JP or judge allowing jurors to be summoned by the sheriff, constable, marshal, policeman or court of the jurisdiction.

### ***Confidentiality of Juror Information***

- Prohibits juror names and information from being released unless required by law or ordered by the court.
- Specifies that all records containing juror biographical information are closed to the public.
- Keeps random jury box seating lists confidential before use.

### ***Automation***

- Allows a jury management automation system to be used to perform the duties required by the jury statutes.
- Provides that the jury automation management system must be programmed to ensure random selection procedures.
- Mandates that the courts use random selection procedures throughout the juror selection process, including selecting persons to be summoned, assigning jurors to panels and calling jurors for voir dire.

### ***Jury Questionnaire***

- Requires the jury commissioner or *jury manager* to use a questionnaire to determine if a person is qualified to serve.
- Allows the jury commissioner or *jury manager* to require additional information to determine whether a person is qualified to serve or has valid grounds to be excused from service or have service postponed. Provides that the presiding judge may issue an order or a subpoena may be issued by a *jury commissioner* or *jury manager* asking any person on the master list to appear before the *jury commissioner* or *jury manager* to answer questions on the person's qualification or grounds for excusal.
- Permits the *jury manager* or jury commissioner to destroy a questionnaire 90 days after receipt.

### ***Miscellaneous***

- States that if a person is permanently excused from jury service, the person must be notified of the excusal.
- Calls a grand jury every 4 months in counties with more than 200,000 persons.
- States that in the event that a grand juror needs to be replaced, the presiding judge of the superior court or a designee may administer the oath to an alternate grand juror.
- Presumes that a citizen whose name/address appears on the master jury list is a resident of the jurisdiction for summons purposes.
- Allows the court to compel a juror to attend jury service on another date if the juror has failed to respond to a second summons notice.
- Defines *juror pool*, *jury manager*, *jury panel*, *master jury file*, *jury commissioner* and *master jury list*.

**SB 1619 – Chapter 140 – prisoners; restitution payments**

Directs the Director of ADC to withdraw a minimum of 20 percent up to a maximum of 50 percent from prisoners' spendable account and trust fund or retention account each month for restitution if the prisoner has been ordered by the court to pay restitution.

**SB 1628 – Chapter 176 – youthful sex offenders; treatment**

Prescribes requirements for specific sex offender treatment programs, provides a process for certain sex offenders to obtain a hearing to determine if the offender should be transferred to the juvenile court and requires the court to conduct an annual probation review.

***Requirements for Sex Offender Treatment Programs***

- States that a *sex offender* must be placed in a treatment program with similar offenders of a similar age and developmental maturity level if group treatment is prescribed.
- Defines a *sex offender* as a person who is 21 or younger and has been adjudicated delinquent for or convicted of a sex offense that does include persons who, during the commission of the offense, discharge, use or threaten with a deadly weapon or dangerous instrument.

***Annual Probation Review***

- Requires the court, at the request of a probationer, to conduct a probation hearing at least once a year for a probationer who is under 22 years old and was convicted of a sex offense requiring registration that occurred before the person turned 18 years.
- States that at the hearing, the court must consider whether to continue, modify or terminate a person's term of probation, a person's duty to register as a sex offender or a person's requirement to be notified to the community.

***Transfer Hearings for Juveniles Tried as Adults***

- Requires the court to hold a hearing to determine if jurisdiction should be transferred from the adult court to the juvenile court if a juvenile is being prosecuted as an adult for a sex offense and specific conditions are met.
- Transfers the juvenile to juvenile court if the court finds by clear and convincing evidence that public safety and the rehabilitation of the juvenile would be best served by the transfer.
- Outlines factors the court must consider in making the determination.